

The Legal Foundation

To fully understand the model water use plan for Carteret County, some background information is important. It is necessary to define public trust water and public trust rights. A complete definition must include a description of the jurisdictional boundaries of trust waters and a brief discussion of the rights that users can exercise within these areas.

It is also important to understand the existing regulatory structure as it applies to the public trust. This structure defines our management and stewardship responsibilities for public waters. A local water use plan and any attempt by local government to regulate public trust water must not be in conflict with existing laws and regulations. Local plans and ordinances must interact with and, in some cases, refine existing law.

Public Trust Water

The concept of public trust has ancient origins. Roman law held that "[b]y the law of nature" certain resources were considered "common to all": air, running water, sea, and shores of the sea (*Institutes of Justinian* 1841). Old English common law, from which much of the law in this country evolved, allowed the King to own the beds of navigable waters, but gave the public the right to use the waters. It is from this history that the American idea of public trust evolved. The concept holds that the states own the tidelands and their associated resources, but hold them in "trust" for the people (Selmi & Manaster 1989).

In North Carolina we adhere to this concept by recognizing public or state ownership of land covered by tidal waters. All the water that covers this land, as well as navigable water covering non-tidal lands, is also within the public trust. Consequently, all the water in the coastal rivers and sounds of Carteret County is public trust water and all land below mean high tide is public trust land. North Carolina recognizes one situation in which land beneath tidal water can be privately owned. (For a full discussion of this exception see page 19). In this situation, however, the owner's private property rights cannot be exercised if they are opposed to the public trust.

We all enjoy the right to use public trust land and water. These rights, called public trust rights, include the right to navigate, swim, hunt, fish and enjoy all recreational activities in the water courses of the state and the right to freely use and enjoy the state's ocean and estuarine beaches and public access to the beaches. New rights may be added if the needs of society dictate.

Our Stewardship Responsibility Over The Public Trust

North Carolina takes seriously its responsibility to protect and enhance the public trust. The concept is embodied in the state's constitution, case law and statutory law. Article XIV, Section 5 of the Constitution says that:

"It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry and to this end it shall be a proper function of the State of